

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JAMES HAYDEN,

Plaintiff,

v.

2K GAMES, INC. and TAKE-TWO
INTERACTIVE SOFTWARE, INC. ,

Defendants.

CASE NO. 1:17-cv-02635-CAB

DECLARATION OF TRISTAN THOMPSON

I, Tristan Thompson, declare as follows:

1. I submit this declaration in support of Take-Two Interactive Software, Inc. and 2K Games, Inc. (collectively, “Take-Two”).

I. My Background

2. I have been a professional basketball player with the National Basketball Association (“NBA”) since 2011, when I was drafted by the Cleveland Cavaliers. At the time, I was the highest drafted Canadian-born player in NBA history. I spent most of my NBA career with the Cavaliers, but I have also played for the Boston Celtics and I am currently playing for the Sacramento Kings.

3. Before joining the NBA, I played high school basketball at Findlay Prep in Henderson, Nevada. Under my leadership, we won Findlay Prep’s first National Championship. After graduating high school, I played college basketball for the University of Texas at Austin, a top-ranked basketball program. At Texas, I won numerous awards, including the team’s Most Valuable Player award.

II. My Tattoos

4. My tattoos are very personal and meaningful to me. I carefully choose each of my tattoos and pick quotes and images that are specifically important to me. Several of my tattoos, for example, include religious imagery or quotes that I find powerful and represent my relationship to my family.

5. It is my understanding that this case, in part, is about a tattoo on my chest that says “My Brother’s Keeper” and includes an image of two hands reaching towards each other (the “Brother’s Keeper Tattoo”). I hired James Hayden, a tattooist at Focused Tattoos in Cleveland, Ohio, to ink the Brother’s Keeper Tattoo my chest in 2012.

6. I was the one who came up with the design for the Brother's Keeper Tattoo. I told Mr. Hayden that I wanted him to ink the words "My Brother's Keeper" across my chest, in honor of my brother, Amari Thompson. The words "My Brother's Keeper" are from the Book of Genesis and reference the story of Cain and Abel. I also asked him to ink the image of the hand of God reaching out to touch the hand of man, which is an image from Michelangelo's "The Creation of Adam," part of the Sistine Chapel. The hands from the "Creation of Adam" are shown below on the left, and an image of the Brother's Keeper tattoo is shown below on the right:



The Sistine Chapel



Brother's Keeper Tattoo

7. Before he inked the Brother's Keeper Tattoo on my chest, Mr. Hayden drew it on my chest with a marker. I approved the design and, once I gave him permission, Mr. Hayden inked the tattoo on my chest. When he finished, I paid Mr. Hayden for the Brother's Keeper Tattoo and left the tattoo parlor. I had absolutely no expectation that I would need to go back to Mr. Hayden for permission to show the tattoo inked on my body or to authorize others to show my tattoo. I never thought I would need to have any further contact with him.

8. As my tattoo is very large, I had numerous sessions with Mr. Hayden when he inked it. From time to time, Mr. Hayden and I would discuss that I was a professional NBA basketball player for the Cavaliers. Mr. Hayden must have understood that I regularly appeared

on television and in other media. Despite many opportunities to do so, Mr. Hayden never told me that I needed his permission before I could appear in or authorize others to show me in media, like television or video games, with my tattoo visible. He also never told me that he claimed a copyright in my tattoo. I was not given any documents about copyright issues. Mr. Hayden had lots of opportunities since 2012 to contact me and let me know that I needed his permission before licensing my likeness, but he never did so. In fact, Mr. Hayden never contacted me either before or after he filed this lawsuit.

9. Because of my expectations when getting inked and the fact that Mr. Hayden never said a word about copyrights, I was very surprised to hear that Mr. Hayden is bringing this lawsuit. I thought I was free to go about my life showing my tattoo, and depicting it in media without needing to pay Mr. Hayden.

10. This lawsuit also does not make sense to me, because the Brother's Keeper Tattoo is on my chest, and is therefore covered up by my jersey when I play basketball or appear in media wearing my uniform, including *NBA 2K*. There is no way anyone would be able to make out my tattoo's design when I'm wearing my jersey.

III. My Rights to the Tattoos

11. I believe that the Brother's Keeper Tattoo is part of my likeness. I always thought that I had the right to show my others and license my likeness to others for use in creative works like television, movies, and video games. In fact, this is a key part of my job as a professional athlete. Like many celebrities, my image is important to my livelihood. If Mr. Hayden's lawsuit was to succeed, it would essentially take away my ability to freely license my image, which is not in keeping with my understanding when I got my tattoo.

12. I have other tattoos in addition to the Brother's Keeper Tattoo that Mr. Hayden inked. Like Mr. Hayden, none of the other tattooists I hired ever told me that I needed their

permission to be shown with my tattoos visible either. Mr. Hayden is the only tattooist who has ever claimed that my being shown in media with my tattoos infringed their rights. I think Mr. Hayden is trying to change the ordinary practice of the tattoo industry and expectations about tattooing. I would not have wanted to get a tattoo if I thought I would need the tattooist's permission to be shown as I look in real life.

IV. Take-Two's Right to Portray Me with My Tattoos

13. I granted the NBA and the NBA Players Association permission to license my likeness to third parties. I thought that I had the right to grant this permission. I also understand that the NBA and the NBA Players Association granted permission to Take-Two to use my likeness in *NBA 2K*.

I declare under penalty of perjury that the foregoing is true and correct.

10/19/2021

Executed this ____ day of _____, 2021.



Tristan Thompson